89-673

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JOHN YIAMOUYIANNIS,
Petitioner

v.

PAUL THOMPSON, EXPRESS NEWS,
BEXAR COUNTY MEDICAL SOCIETY
and DR. RANDALL PRIESSIG,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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QUESTIONS PRESENTED

Do *Gertz v. Welch* and the First Amendment establish an absolute constitutional privilege for expressions of opinion?

Does *Gertz* protect the press when they conspire to publish false and contrived "opinion" intended to misrepresent the reputation of a person for the purpose of damaging his reputation?

Does *Gertz* establish a privilege for opinion statements regardless of malice?

Is it right to categorize malicious and false publications about character as "false ideas" protected by *Gertz* as a matter of law?

Where the relevant scientific facts are undisputed, does an expert's qualifications become a bona fide public issue?

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To The Honorable Chief Justice And Associate Justices Of The Supreme Court Of The United States:

The petitioner herein, prays that a writ of certiorari issue to review the judgment of the 4th Court of Appeals and the Supreme Court of the State of Texas entered in the above-entitled cause on the 13th day of September, 1989.

OPINIONS BELOW

The opinion of the Fourth Court of Appeals of Texas is reported at 764 S.W.2d 338 and is printed in Appendix A herein. The Texas Supreme Court denied a Writ of Error and the Motion for Rehearing was denied September 13, 1989, making judgment final.

JURISDICTION

Judgment became final on September 13, 1989. This Petition was filed within 60 days. The jurisdiction of the Supreme Court is invoked under Supreme Court Rule 17 (c) and 28 U.S.C. 1257.

STATEMENT OF THE CASE

Suit was filed by Appellant, John Yiamouyiannis, a Ph. D. in biochemistry. He sued Paul Thompson, San Antonio Express News, Bexar County Medical Society, and Dr. Randall Priessig, Appellants. The suit alleged that defendants agreed and conspired to falsely defame and did defame the character, motives, and reputation of plaintiff. Defendants' motive was to avoid debating scientific facts, which they did not dispute. They intentionally raised the issue of Plaintiff's qualifications in order to conceal and cloud the real issues. They published false, libelous, and defamatory statements concerning plaintiff's reputation and qualifications as an expert on the fluoridation of public water supplies. In the suit, Plaintiff also alleged negligence, malice, violation of Section 39.02 of the Texas Penal Code, Section 1983 of 42 USCA, and tortious interference with Plaintiff's right to free speech and public debate. The Trial Court denied Appellant his right of discovery, and then granted sum-

mary judgment for the press defendants solely on the basis of the pleadings. The Court of Appeals held that the false statements were "expressions of opinion" protected by the first amendment. Ironically the summary judgment was based upon an alleged first amendment privilege to libel and defame Plaintiff, solely because Plaintiff exercised his first amendment right to speak out on the undisputed facts concerning fluoridation.

Petitioner, John Yiamouyiannis, seeks this Writ of Certiorari. For Summary Judgment purposes the facts alleged in his petition must be assumed to be true. In November of 1985, San Antonio was to have an election concerning fluoridation of its public water supply. Dr. John Yiamouyiannis became involved as an expert. He is a Doctor in Biochemistry. He was asked to publicize the scientific facts at issue. He "enjoyed a good reputation in his field, in his business, and in general. He knows the subject of fluoridation of public water supplies, and he honestly presents the facts." (TR 26) At some time prior to October, 1985, Defendant, Bexar County Medical Society, and Randall Preissig, M.D., agreed that during the fluoride campaign, the scientific issue would not be debated, that instead only conclusions would be repeated that fluoride in the water supply was effective and safe. Defendants agreed that when Plaintiff sought to discuss the scientific evidence a collateral attack would be made upon his motives, character, reputation, in order to cloud the issue. Dr. Randall Preissig and Paul Thompson agreed to be the spokesmen for the Medical Society. They were authorized and instructed to carry out the strategy. (TR 27-28) Defendants maliciously carried out this plan by publishing in the newspapers, on

TV, and by other written and oral means, untrue and defamatory "opinions" about Dr. Yiamouyiannis. They called him a "quack", making untrue statements about his past, stating he was a "hoke artist", "fearmonger", denying his credentials and denying that he deserved respect, stating that he engaged in "incomprehensible mumbo jumbo", that he has "been exposed for quackery", (TR 26) stating that he was "the head of an institution that opposed the small pox vaccine, that opposed polio vaccine, that opposed pasteurization of milk" (TR 28-29). All of the above "opinions" were false and were intentionally and maliciously made with the intent to harm Plaintiff's reputation and credibility, and to avoid discussion of the relevant fact issues.

Defendants conceded that the scientific issues are not a matter of legitimate dispute. Fluoride is a poison, and small amounts in the public water supply are not safe and are not effective in preventing tooth decay. This fact is relevant to this case. Defendants did not contest the relevant facts, therefore Plaintiff's qualifications did not legitimately come into issue. It is axiomatic that where facts are undisputed, the qualifications of the expert do not become an issue. Defendants claimed that Dr. Yiamouyiannis was unqualified, dishonest, and engaged in "quackery" only because he presented undisputed proof that fluoridation of public water supplies has not been proven safe or effective in reducing tooth decay. It is ironic that Defendants defamed and libeled Plaintiff in order to chill Plaintiff's right to free speech, then Defendants contend that their own right to free speech gives them a privilege to falsely malign Plaintiff and to deceive the public. Defendants contend from one side of their mouth that they have the right to "chill"

Plaintiff's freedom of speech by giving false facts and false opinions concerning his character and reputation, while out of the other side of their mouth they say the court cannot chill Defendants' free speech by requiring that their facts be true or reasonable.

Defendants' filed motions for summary judgment. (TR 91, 94) The motions are based solely upon the pleadings. (TR 91, 94) The motions contend that all statements complained of by the Plaintiff are constitutionally protected as statements of opinion, not statements of fact. (TR 91, 94)

Plaintiff's response showed that the statements complained of were statements of fact, were not limited to the newspaper article, and included both the newspaper article and other statements made. Plaintiff also complained of a conspiracy to raise a false issue by misrepresenting Plaintiff's qualifications. (TR 96-97) Plaintiff alleged that the statements were false statements of fact designed to discredit Plaintiff. (TR 97) Appellant also alleged malice, negligence, and various statutory violations. (TR 29)

The lower Courts held most statements to be expressions of opinion and granted Defendants' Summary Judgment on November 6, 1987. (TR 102)

False statements that a person is incompetent or corrupt, *Rinaldi v. Holt*, 366 N.E.2d 1299, that a person does not have professional capacity for his profession *Sewell v. Brookbank*, 581 P.2d 267, charges of actual dishonesty, want of integrity or unprofessional conduct *Ratner v. Young*, 465 F.Supp. 386, and allegations that a person or organization had seriously harmed the health

of those who sought its help, *Church of Scientology v. Minn. State Medical Assn. Foundation* 264 N.W.2d 152 have all been held to be defamatory, libelous and actionable.

Where the alleged defamatory statements are unambiguously fact, or where the alleged statements could be either fact or opinion, the Court cannot say as a matter of law that the statements were not understood as fact, and there would therefore be a triable issue for the jury. *Bindrim v. Mitchell,* 92 Cal. App. 3d 61, 155 Cal. Rptr. 29, *Gregory v. McDonald Douglass Corp.*, 552 P.2d 425, *Good Gov. League v. Group of Seal Beach Inc.*, 586 P.2d 572.

In our case the statements were intentionally designed to divert the public from the factual issues and to discredit and harm Plaintiff's reputation by misrepresenting facts concerning his background, integrity and qualifications. It is verifiable whether or not Plaintiff is a "hoke artist". Plaintiff's "credentials" are verifiable. Whether or not Plaintiff was "exposed for 'quackery' by the prestigious national consumer reports" is clearly verifiable. ". . . quack like Ohio biochemist John Yiamouyiannis", "fearmonger like Ohio biochemist John Yiamouyiannis . . ." are verifiable statements, and therefore not opinion.

The Court of Appeals relied upon *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L.Ed.2d 789 (1974). The lower court says Gertz "establishes an absolute constitutional privilege for expressions of opinion." (page 4 of Opinion) The lower court held in effect that even though the publication was not the true opinion of the defendant, and even though it was

an opinion maliciously published for the purpose of smearing person's reputation, it is privileged. *The U. S. Supreme Court did not say this in Gertz.*

Defendants also relied upon *El Paso Times v. Kerr*, 706 S.W.2d 797 to support this summary judgment. The test as set out in that case was:

> 1. The Court should analyze the common usage of the specific language aimed at determining if there is a precise meaning for which a consensus of understanding exists.
>
> 2. The court should consider the statement's verifiability. Can the statement be objectively characterized as true or false? If it cannot be verified, then the trier of fact could not return a verdict to a special issue questioning the truth of the statement (because truth is always a defense in a libel action).
>
> 3. The court should consider the full context of the statement to determine if the language surrounding the statement would influence the reader's readiness to infer factual content in the specific language used.
>
> 4. The broader context or setting in which the statement appears should be analyzed.

Applying the above test in the Kerr case, the Court holds that the term "cheating" does not have a precise meaning and that is not likely that a reader assumed that the author had undisclosed facts to back up the statement. The Court states "this is material because even a statement of opinion will not be protected if it is couched in such a way to imply that the author possesses undisclosed facts." (page 799). In Dr. Yiamouyiannis' case a reader would certainly assume that the author

had undisclosed facts to back up the attack made on the qualifications, honesty and integrity of Plaintiff. It certainly can be verified that Plaintiff is not a "quack", that he is not a "fear-monger", that he is not opposed to pasteurization of milk and vaccination for small pox, that he is not unqualified to render an opinion on the safety of fluoride in the public water supplies, that he does not "engage in quackery", that he is qualified by education and experience to speak as an expert on fluoridation, and that he does not "gush incomprehensible mumbo jumbo". Further the intent of defendants to discredit Plaintiff and damage his reputation was not only obvious from the statements, but WAS A MATTER OF PRIOR AGREEMENT in order to deny him the forum represented by the radio talk show.

Therefore the Kerr case taken in its full context supports Plaintiff's position that the statements whether fact or opinion are actionable, and the summary judgment should be reversed.

Further Appellees failed to meet their summary judgment burden of proof by failing to prove that Appellant was a public figure, that the statements were true, absence of malice, privilege, absence of negligence, and absence of conspiracy. *Poe v. San Antonio Express News,* 590 S.W.2d 537.

In order to prove Appellees' intentions and malice and to prove the conspiracy, Appellant submitted requests for admissions. (TR 14, 33, 35, 38, 74) It would have been a simple matter for Appellants to admit or deny the request or deny them upon the basis that they did not know the facts. Instead of admitting, denying

or admitting that they did not know, appellants' moved to quash the admissions, claiming they were irrelevant. (TR 21, 43, 83, 86) The Court granted the motion and refused to allow Appellant his discovery. (TR 57, 82)

REASONS FOR GRANTING WRIT

Truth should always be the objective of the Courts and the efforts of the media. Hyperbole, opinion, and form should not be used to conceal the truth, nor should the Courts and the media condone deceit because it is politically expedient. The Courts should not create an artificial distinction between fact and opinion which promotes deceit. All statements of fact can be called "opinion". By refusing to admit or deny Plaintiff's requests for admissions in the trial Court, Defendants affirmed that they have no opinion regarding Plaintiff's qualifications and integrity, and that they had no factual basis to dispute his facts or opinion concerning fluoride. Therefore Defendants' claims of an opinion concerning Dr. Yiamouyiannis' reputation must have been false. Contrary to the lower Court's opinion, there is such a thing as a false opinion.

The defamatory statements were untrue, known by Defendants to be untrue, and were intentionally and maliciously made with the intent to harm Plaintiff's reputation and credibility. (TR 27)

The Court of Appeals has based its opinion upon the *Gertz* case by the U. S. Supreme Court, but has IGNORED portions of the case. *Gertz* clearly provides that the Plaintiff can recover for injury upon clear and convincing proof that the defamatory falsehood was

made with knowledge of its falsity or with reckless disregard for the truth, and Gertz's limitations seem to apply only to punitive or exemplary damages, not to actual damages. (GERTZ, 94 Sup. Ct. Rptr. page 3012.). As stated by the U. S. Supreme Court:

> ". . . It is necessary to restrict defamation plaintiffs who do not prove knowledge of falsity or reckless disregard for the truth to compensation for actual injury."

The opinion handed down by the Texas Court of Appeals holds contrary to *Gertz,* that certain persons (Express News and Paul Thompson) have the right to maliciously and intentionally harm others by expressing an "opinion" they know to be false, baseless, and damaging, simply because they sell newspapers. Further, they have the right to conspire with others to damage a person's reputation with false "opinions" because they sell newspapers. Surely this Court does not intend to sanction this result.

If this opinion stands, then the media can with impunity conspire with others to ignore real public issues and to publish baseless and false "opinions" and maliciously destroy the reputation of any person by publishing its false and baseless "opinion" that a person is dishonest, under the control of some PAC, has no credentials, is unqualified, is a fear monger, and writes opinions that are pure hokum. Neither *Gertz* nor the first amendment intended such an illogical result.

CONCLUSION

Wherefore Petitioner prays that the judgment of the lower Court be reversed, that the case be remanded for a trial, and that Mandamus issue compelling the trial Court to deem the admission admitted or compelling the Appellees to answer the requests for admissions, and for such other relief to which Appellant may be entitled.

Respectfully submitted,

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Attorney for Petitioner

CERTIFICATE OF SERVICE

A copy of the foregoing has been delivered to Lang, Cross, Ladon, Bolderick and Green, C/O Mark Cannan and to Groce, Locke and Habdon, attorneys for Appellees on the ____ day of October, 1989.

EARLE COBB, JR.

APPENDIX A

John YIAMOUYIANNIS, Appellant,

v.

Paul THOMPSON, the Express-News Corporation, the Bexar County Medical Society and Dr. Randall S. Preissig, Appellees.

NO. 04-87-00673-CV.

Court of Appeals of Texas,

San Antonio.

December 30, 1988.

Rehearing Denied February 8, 1989.

Opponnent of drinking water fluoridation brought action alleging defamation among other things, against newspaper and its columnist, and medical society and its spokesman. The 57th District Court, Bexar County, Joe E. Kelly, J., entered summary judgment for defendants, and fluoridation opponent appealed. The Court of Appeals, Peeples, J., held that: (1) alleged statements that fluoridation opponent was quack, hoke artist, fearmonger, had been exposed for quackery, lack solid credentials, and expressed incomprehensible mumbo jumbo, were not libelous; (2) alleged statement that fluoridation opponent once headed group that opposed vaccines for smallpox and polio and pasteurization of milk was potentially defamatory; and (3) although trial court erroneously entered summary judgment on certain un-

challenged causes of action, Court could not disturb ruling, as fluoridation opponent did not assign those adverse rulings as error.

Affirmed in part; reversed and remanded in part.

APPENDIX B

Earle Cobb, Jr., San Antonio, for appellant.

Mark J. Cannan, Lang, Cross, Ladon, Boldrick & Green, Sharon E. Calloway, Groce, Locke & Hebdon, San Antonio, for appellees.

Before ESQUIVEL, BUTTS and PEEPLES, JJ.

OPINION

PEEPLES, Justice.

In this libel case, plaintiff appeals a summary judgment granted on the ground that the defendants' statements were constitutionally protected opinions and not actionable assertions of fact. Plaintiff also complains of certain discovery orders. We affirm in part and reverse and remand in part.

During a referendum campaign in 1985 to authorize fluoridated water in San Antonio, plaintiff John Yiamouyiannis publicly opposed the fluoridation effort, and defendant Paul Thompson questioned his credentials and expertise in the San Antonio Express-News.[1] Thompson

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1. Thompson's column in its entirety reads as follows:
Local radio talk shows an intellectual Sahara Almost incredibly, the ranking radio talk show hosts in San Antonio today have taken it into their heads to oppose water flouridation in the Nov. 5 referendum.
I am talking about Allan Dale of KRNN; Jud Ashmore of KBUC; Our Great Leader Ricci Ware of KTSA, and WOAI's resident pundit Carl Wiglesworth.
If anyone at all in the intellectual Sahara of Alamo City Radio supports fluoride, it is a tightly kept secret.
The four talk show hosts make a display of objectivity by now and then inviting in a proponent of the fluoride cause. But then they offset that by presenting an outrageous hoke artist and im-

called Yiamouyannis a "quack" and "an outrageous hoke artist and imported fearmonger," implied that he lacked "solid credentials," said Consumer Reports had exposed him for "quackery," and characterized his views as "in-

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ported fearmonger like Ohio biochemist John Yiamouyiannis as if he had solid credentials and deserved the same kind of respect.

The truth is our radio hosts probably don't know the difference. A couple of them treated Yiamouyiannis as if he were some kind of messiah. You could accurately say they were charmed, carried away by the well-traveled Ohio pitchman and got conned on their own radio shows.

Yiamouyiannis, exposed for "quackery" by the prestigious national Consumer Reports (he later sued Consumer Reports and lost), is the No. 1 hired gun of anti-fluoride campaigners here, and indeed, was back in town yesterday with another gush of his incomprehensible mumbo-jumbo.

The lineup

Right up and down the line, whether they admit it or not, the quartet of presiding S.A. radio forum leaders goes down as stuffy-conservative by persuasion, two of them on the redneck side.

KRNN's Dale, a septuagenarian who likes to think of himself as one of the last bastions of good old-fshioned American values, is actually a throwback. On most social issues, "Old Leather Lungs," as he's called, not always in endearment, ends up in a position to the right of the Visigoths.

KBUC's Ashmore and KTSA's Ware not too long ago were co-hosts of an arrogant wakeup show on country-western KBUC that was bitterly denounced by minority leaders as out-and-out redneck and, for a time, kept the station in hot water with the FCC.

The Ricci and Jud Show broke up last year, with Ware going on nights now at KTSA. In basic outlook and orientation, though, nothing has changed with this twosome.

As for WOAI's Wiglesworth, a bearded man with an authoritative tone but no scientific background, he had the gall to tell listeners early in the fluoride hassle that HIS OWN studies had convinced him of the rectitude of the antil-flouride cause.

Mediocrities

One by one, in describing the talk show hosts of Alamo City Radio, one can say with total assurance, "Larry King he's not."

It's true an expert like King, thoroughly backgrounded on his guests in advance, with a gimlet eye for roving mahatmas, swamis and other phonies, will not often be found in a market of this size. But we certainly deserve something better than the kind of radio forum we've got—undiscriminating hosts allowing anyone at all on

comprehensible mumbo jumbo." Defendant Bexar County Medical Society and its spokesman Dr. Randall Preissig made similar statements, using the words "quack" and "quackery" in reference to plaintiff, and asserting that he had headed an institution that opposed the pasteurization of milk and vaccines for smallpox and polio.

Yiamouyiannis brought suit for libel against Thompson, The Express-News Corporation, Preissig, and the Medical Society. Each defendant moved for summary judgment based on the pleadings on the sole ground that each of their statements were an assertion of opinion, absolutely priviledged under the First Amendment, as construed in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L.Ed.2d 798 (1974). In *Gertz*, the court gave to statements of opinion a constitutional shield against defamation lawsuits:

> Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact.

Id. at 339-40, 94 S. Ct. at 3007.[2] According to later

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their air to spout the wackiest sort of unchecked opinionation.
Any radioman who can't spot the difference between a quack like Ohio biochemist Yiamouyiannis and authorized spokesmen for the medical, dental and research professions of the country ought to be kicked off the air.
He's a drawback, a menace to progress and correct public information, and he wouldn't be qualified to run a talk show in Moose Inn, Idaho.

2. The Court reaffirmed this statement in *Sun Corp. v. Consumers Union*, 466 U.S. 485, 504, 104 S. Ct. 1949, 1961, 80 L.Ed.2d 502 (1984), and suggested continued adherence to the fact/opinion distinction in *Hustler Magazine v. Falwell*, 485 U.S. _____, 108 S. Ct. 876, 99 L.Ed.2d 41 (1988).

cases, this statement establishes as absolute constitutional privilege for expressions of opinion. *See Ollman v. Evans,* 750 F.2d 970, 974-75 n. 6 (D.C. Cir. 1984) (en banc), *cert. denied,* 471 U.S. 1127, 105 S. Ct. 2662, 86 L.Ed.2d 278 (1985); *Brasher v. Carr,* 743 S.W.2d 674, 678-79 (Tex. App.—Houston [14th Dist.] 1987, writ granted); *City of Dallas v. Moreau,* 718 S.W.2d 776, 780 (Tex. App.—Corpus Christi 1986, writ ref'd n.r.e.); *El Paso Times, Inc. v. Kerr,* 706 S.W.2d 797, 798 (Tex. App.—El Paso 1986, writ ref'd n.r.e.), *cert. denied,* 480 U.S. 932, 107 S. Ct. 1570, 94 L.Ed.2d 761 (1987).

[1] Where to locate the boundary between absolutely privileged opinions and actionable assertions of fact is a question of law for the court. *See El Paso Times, Inc. v. Kerr, supra* at 800 (citing cases). This law question may be resolved at trial or raised, as in this case, in a summary judgment hearing at which the court decides whether, in the words of TEX.R.CIV. P. 166a(c), "the moving party is entitled to judgment as a matter of law" under *Gertz.*

The line between opinions and statement of fact is not always distinct. The court in *Ollman v. Evans, supra,* proposed a four-part inquiry that was applied by the Texas courts in *El Paso Times v. Kerr and Brasher v. Carr, supra.* We consider the Ollman analysis helpful. In distinguishing between fact and opinion, the court should (1) analyze the common usage of the specific language to determine whether it has a precise, well understood core of meaning that conveys facts, or whether the statement is indefinite and ambiguous; (2) assess the statement's verifiability, that is, whether it is objectively capable of being proven true or false; (3)

consider the entire context of the article or column, including cautionary language; and (4) evaluate the kind of writing or speech as to its presentation as commentary or "hard" news. 750 F.2d at 978-84. This inquiry should help determine, for example, whether the statement is to be taken as precise and literal or loose and figurative, and whether the language is employed as metaphor or hyperbole, or to convey actual facts.

[2] Under these principles, the references to Yiamouyiannis as a quack, a hoke artist, and a fearmonger are assertions of pure opinion, as are the statements that he was exposed for quackery, lacks solid credentials, and expresses incomprehensible mumbo jumbo. These terms of derision, considered in context and in light of the fluoridation debate, are vintage hyperbole, and are not capable of proof one way or the other. They are the speaker's shorthand way of opining that Yiamouyiannis is not worthy of belief, his views are confused nonsense, and he is not qualified to instruct the public about fluoridation. While other commentators might have taken a more ratiocinative approach, the defendants were entitled to use instead these particular terms of invective in this context. As to each of these utterances, the absolute constitutional privilege applies, and summary judgment was proper as to plaintiff's libel claims and his libel-related counts sounding in negligence and conspiracy.

[3] We believe this decision is true to the First Amendment values reflected in *Gertz*. When the topic is a public issue such as the fluoridation of drinking water, speakers may express their opinions about their opponents' views and qualifications without having to prove the substantial "truth" of those opinions to a jury

in a defamation case. Our holding also recognizes the limitations of the legal process, which is ill-suited to determine what is and is not quackery, hokum, and mumbo jumbo, even with such tools as broad discovery, expert testimony, and finely-crafted jury questions and definitions.

[4] But Preissig's declaration that Yiamouyiannis once headed a group that opposed vaccines for smallpox and polio and pasteurization of milk is a specific claim about plaintiff's actions in the past. Unlike the other subjective statements, it can easily be proven true or false. We hold that this assertion of fact is unsheltered by the Gertz privilege for opinions, which was the sole ground urged by the defendants. Whether Preissig's words are defamatory in the first place, and whether they are true, are issues not raised by any of the motions for summary judgment.

[5] In addition to the libel-related claims, plaintiff pleaded that the defendants used "official oppression" to keep him off radio and television. This, plaintiff's petition contends, violates section 39.02 of the Penal Code and 42 U.S.C. § 1983, and constitutes a tortious interference with his right to free speech. The summary judgment before us orders that plaintiff take nothing on the entire case, including these three non-defamation counts, even though they were not addressed by any of the motions for summary judgment. The court erred in ruling on these unchallenged causes of action. *Chessher v. Southwestern Bell Tel. Co.*, 658 S.W.2d 563, 564 (Tex. 1983) (Because motion for summary judgment challenged only one of four pleaded causes of action, take-nothing judgment on the three unchallenged causes

was improper). But plaintiff has not assigned these adverse rulings as error in this court, and therefore we cannot disturb them. *Prudential Ins. Co. v. J.R. Franclen, Inc.*, 710 S.W.2d 568, 569 (Tex. 1986); *Gulf Consol. Int'l, Inc. v. Murphy*, 658 S.W.2d 565, 566 (Tex. 1983).

Plaintiff complains further of a protective order that sustained objections to his request for admissions concerning the factual basis for the defendants' opinions and the merits of fluoridated water. In light of our holdings about plaintiff's claims, most of the requests for admissions are clearly irrelevant. Upon remand the scope of discovery will be determined by the trial court in the exercise of its discretion.

For the reasons stated, we affirm the judgment that plaintiff take nothing against defendants Thompson and the Express-News. We affirm the judgment that plaintiff take nothing against defendants Preissig and the Medical Society, with the sole exception of the libel and libel-related causes of action based on the statement of fact concerning polio, smallpox, and pasteurization measures, as to which the judgment is reversed and remanded.

SUPREME COURT OF TEXAS
P.O. Box 12248
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Austin, Texas 78711
John T. Adams, Clerk

September 13, 1989

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RE: Case No. C-8433

STYLE: JOHN YIAMOUYIANNIS
v. PAUL THOMPSON ET AL.

Dear Counsel:

Today the Supreme Court of Texas overruled Petitioner's motion for rehearing of the application for writ of error in the above styled case.

Respectfully yours,

John T. Adams, Clerk

By: _____
(Signature Illegible)
Deputy